



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**Criminal Appeal 312 of 2005**

**MURIMI KANYI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal from the Judgment of L. W. Gitari, Principal Magistrate,  
dated 18<sup>th</sup> July, 2003, in the Principal Magistrate's court at Kerugoya, Criminal Case No.605 of  
2002)**

**JUDGMENT**

The Appellant was charged with robbery with violence contrary to section 296 (2) of the Penal Code in that on the 12<sup>th</sup> day of February, 2002 at Kagio Township in Kirinyaga District of the Central Province the Appellant jointly with another not before court and being armed with stones robbed Simon Muriithi Gatugi of cash Kshs. 150/-, one unga packet and bread using violence in which the said Simon Muriithi Gatugi was wounded.

The Appellant was found guilty and sentenced to death. He filed this appeal and during the hearing, the learned Principal State Counsel, Mr. Charles Orinda conceded the appeal on three grounds:

Firstly, part of the prosecution's case was conducted by a prosecutor who was not qualified in terms of section 85 (2) of the criminal procedure code. The trial was therefore a nullity.

Secondly, while there was a change of trial magistrates, section 200 of the Criminal Procedure Code was not complied with.

Thirdly, the evidence is not sufficient to support a conviction.

We have looked at the recorded evidence and it appears that section 200 of the Criminal Procedure Code was complied with and therefore ground number two does not exist. However, there remains two grounds, the first and the third grounds, each sufficient to make the Appellant's appeal be allowed, the first ground having the additional effect of making the trial a nullity.

In the circumstances therefore, we do hereby declare the trial of the Appellant a nullity, allow his appeal, quash his conviction and set aside the sentence imposed upon him.

We do order that the Appellant be released forthwith unless lawfully detained in some other cause.

Dated this 31<sup>st</sup> day of March, 2006.

**J. M. KHAMONI**

JUDGE